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**From:** Mutter, Andrew [mutter.andrew@epa.gov]  
**Sent:** 10/4/2018 7:34:19 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Subject:** FW: Compilation- 10/04/2018

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**From:** Agarwal, Ilena  
**Sent:** Thursday, October 4, 2018 1:34:11 PM (UTC-07:00) Mountain Time (US & Canada)  
**To:** AO OPA OMR CLIPS  
**Subject:** Compilation- 10/04/2018

**Compilation**

[Washington Post: EPA excluded its own top science officials when it rewrote rules on using scientific studies](#)

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**Washington Post: EPA excluded its own top science officials when it rewrote rules on using scientific studies**

[https://www.washingtonpost.com/energy-environment/2018/10/03/epa-excluded-its-own-top-science-officials-when-it-rewrote-rules-using-scientific-studies/?utm\\_term=.3da469f2104c](https://www.washingtonpost.com/energy-environment/2018/10/03/epa-excluded-its-own-top-science-officials-when-it-rewrote-rules-using-scientific-studies/?utm_term=.3da469f2104c)

By Steven Mufson and Chris Mooney- October 3 at 3:58 PM

When former EPA administrator Scott Pruitt launched an effort to limit what kinds of scientific studies could be used to protect public health, he left out some key experts: the Environmental Protection Agency's own Office of the Science Advisor, according to an email exchange obtained by The Washington Post.

Tom Sinks, director of the office, said in an April 24 email that "Even though OSA and I have not participated in the development of this document and I just this moment obtained it (have yet to read it), I am listed as the point of contact."

Sinks added, accurately, that “the proposal likely touches upon three aspects of OSA work — public access to EPA funded research, human subjects research protection, and scientific integrity” — all of which fall in his area of responsibility.

The email was released in response to a Freedom of Information Act request by the Union of Concerned Scientists.

The proposed rule, dubbed “Strengthening Transparency in Regulatory Science,” has ranked as one of conservatives’ top priorities for years. It would allow the EPA to consider only studies for which the underlying data is publicly available and can be reproduced by other researchers. Such restrictions could alter how the agency protects Americans from toxic chemicals, air pollution, radiation and other health risks, adding to the agency’s broader deregulatory agenda.

“It’s astounding that the EPA science adviser’s office was left completely out of the loop during the development of a major science policy proposal,” said Michael Halpern, deputy director of the center for science and democracy at the Union of Concerned Scientists. “Crafting any significant proposal behind closed doors without even bothering to notify career scientific staff suggests that it’s much more about politics than it is about science.”

In a statement, the agency countered that “EPA received input from a number of stakeholders and utilized the intra and interagency process to ensure a robust proposal was put forward.”

The science adviser’s office is part of the agency’s chief research branch, the Office of Research and Development (ORD). But an agency reorganization could merge it with another office further down the organizational chart within the ORD. Critics say this could blunt its influence.

In an interview Monday, acting EPA administrator Andrew Wheeler said the agency was not seeking to diminish the role of the ORD.

“We’re really trying to elevate the office within the organization and try to make it more customer-focused, so that all the other program offices turn to our research office for research leads and science needs,” Wheeler said.

Though technical, the Strengthening Transparency in Regulatory Science proposal is highly controversial. In an extended public comment period, it has drawn 590,000 comments, EPA spokesman John Konkus said Tuesday.

Sixty-nine prominent scientific, medical and academic organizations — including the American Association for the Advancement of Science — called on the EPA to withdraw the proposed rule. They said it would exclude reputable studies founded on epidemiological data that include proprietary information or confidential information from patients participating in private-sector research.

“Contrary to the stated purpose of the rule, the rule would result in the exclusion of valid and important scientific findings,” Rush D. Holt, a former congressman and former physics professor who is now the CEO of the American Association for the Advancement of Science, said in testimony prepared for a congressional hearing Wednesday. He said the rule was “not about transparency or sound science” and that the title was an “insidious dodge.”

Peter Wood, president of the conservative advocacy group the National Association of Scholars, wrote to Pruitt urging the EPA to “institute a process by which to rescind existing regulations based upon irreproducible science.”

The EPA’s proposed regulation closely resembles the HONEST Act, the subject of a hearing Wednesday at the Senate Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight. Edward J. Calabrese, professor at the University of Massachusetts at Amherst’s School of Public Health, hailed the EPA’s “bold and constructive proposal” in prepared testimony.

One area that could be affected deals with air pollution regulations that limit levels of fine particulate matter that can enter the bloodstream and cause lung and heart problems. The link between these particles and health risks comes from several studies, but one of the most important, Harvard University's look at pollution in six cities, promised subjects that their extensive personal information would not be shared.

"A study that has been replicated many times might be excluded from consideration, while one that uses an inferior database that is publicly available would be considered," said John Bachmann, who worked at the EPA for 30 years and was involved in setting pollution regulations.

Guidelines for radiation exposure could also be undermined by limits in the proposal, experts say. For the past three decades, scientists have relied on something called the linear, no-threshold model in evaluating the biological effects of radiation. It is a way of measuring a full range of radiation doses against health outcomes, primarily cancer.

The model is used in part because of the difficulty of measuring exposure and long-term health effects, with the exception of the survivors of the Hiroshima and Nagasaki atomic bombings in 1945.

Until now, government regulators have said that even low levels of radiation can be hazardous and cause cancer.

Konkus said in an email that the proposal "doesn't even mention the word 'radiation.'" Yet the EPA proposal does say: "EPA shall evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold dose response, on a case-by-case basis."

That pleases Calabrese, who is an advocate of "hormesis," the idea that exposure to low doses of toxins — or radiation — can be beneficial. He said in his prepared testimony that moving away from the linear, no-threshold approach was "long overdue."

Asked about the implications for resetting acceptable radiation exposure, Konkus said in an email that the EPA's policy would be to continue using the linear, no-threshold model for "population-level radiation protection purposes" and that the proposed regulation "would not ... trigger any change in that policy."

David J. Brenner, director of the Center for Radiological Research at Columbia University Medical Center, said: "Dr. Calabrese's view, that exposure to low levels of radiation are beneficial to human health and decrease cancer risk, is very much an outlier view in our field, with little or no supporting data."

Brenner said in an email that "over the past few years there have been a number of large scale epidemiological studies that strongly suggest that low levels of radiation produce a very small risk of cancer. These studies would suggest that the current radiation limits for the public are pretty reasonable, providing a reasonable balance between public safety and the beneficial uses of radiation."

"We don't know how harmful low doses of radiation are yet," said Allison Macfarlane, former chairman of the Nuclear Regulatory Commission and a supporter of limiting low-level exposure. "That's because it's difficult to distinguish which harms (exposure to cigarette smoke, exposure to low doses of radiation, exposure to chemicals, etc.) caused cancer and because it takes the cancer so long to develop."

Juliet Eilperin contributed to this report.

## The Hill: EPA left key official out of 'secret science' rule

<https://thehill.com/policy/energy-environment/409777-epa-left-key-official-out-of-secret-science-rule>

BY MIRANDA GREEN - 10/03/18 05:40 PM EDT

The Environmental Protection Agency (EPA) under former Administrator Scott Pruitt excluded one of its top scientists while devising its new “secret science” rule, the Washington Post reported Wednesday.

Emails obtained through a Freedom of Information Act request by the Union of Concerned Scientists show that the EPA’s director of the Office of the Science Advisor (OSA), Tom Sinks, was self-admittedly completely out of the loop as the EPA worked to devise the new rule that aimed to limit the types of science that could be used by the agency in devising new regulations.

In an April 24 email, Sinks wrote, “Even though OSA [the Office of Science Advisor] and I have not participated in the development of this document and I just this moment obtained it (have yet to read it), I am listed as the point of contact.”

Sinks added that he was also concerned about his lack of involvement because the rule clearly would affect the roles of his office, saying “the proposal likely touches upon three aspects of OSA work — public access to EPA funded research, human subjects research protection, and scientific integrity.”

An EPA spokesperson said in a statement to The Hill that the agency “received input from a number of stakeholders and utilized the intra and interagency process to ensure a robust proposal was put forward.”

The rule is formally known as the “Strengthening Transparency in Regulatory Science,” and was introduced in April. It aims to expose the methodology behind scientific findings and cut back on what Pruitt had deemed “secret science.”

It is one of many decisions made by Pruitt under the auspices of increasing transparency and getting rid of conflicts of interest. Last year he announced a new agency-wide policy that would bar scientists receiving money through an EPA grant from sitting on any science advisory board.

The rule met almost immediate resistance from the science community, which argued that it would exclude a number of peer reviewed scientific studies related to public health because many would not be able to share the details of the patients studied.

Instead, critics feared, the rule would place more reliance on industry produced studies that might reaffirm arguments that certain chemicals or emissions had little harmful side effects on human health or the environment.

In June, a group of 103 lawmakers signed a letter sent to Pruitt calling on him to reverse course on the rule-making.

“Contrary to its name, the proposed rule would implement an opaque process allowing EPA to selectively suppress scientific evidence without accountability and in the process undermine bedrock environmental laws,” the lawmakers wrote.

The Senate’s Environment and Public Works Committee on Wednesday held a hearing to discuss the merits and disadvantages posed by the new rule.

Sen. Cory Booker (D-NJ.) likened the rule to the tobacco industry’s old playbook, where companies paid for and pushed studies that appeared to find no health risks associated with smoking.

“This rule is far more likely to hinder science-based regulation than help it,” he said, adding that this was “deja vu all over again.”

EPA confirmed to the Hill last week that it is reorganizing a number of offices within ORD including merging the Office of the Science Advisor with the Office of Science Policy, a move that critics fear would diminish the role of the scientists there and push it further down the totem pole.

## Chemical Watch: EPA round-up

<https://chemicalwatch.com/70733/epa-round-up>

4 October 2018 / Substance notification & inventories, TSCA, United States

### TSCA inventory reminder to processors

The US EPA has reminded industry of the 5 October cut-off date for voluntarily submitting a notice of activity form on chemicals they processed in the ten-year period that ended on 21 June 2016.

Under the amended TSCA, the EPA must update its chemical substance inventory by designating every substance on it as either active or inactive in US commerce in that period.

The optional processor reporting period for this 'inventory reset' exercise followed a mandatory submission period for manufacturers and importers that ended in February. The EPA has announced that more than 38,000 substances have already been notified as 'active'.

The agency says it intends to issue an updated TSCA inventory with all substance designations within a few months.

### TSCA fees webinars

The EPA has announced three webinars on changes to its Central Data Exchange (CDX) as a result of the final fees rule on administering TSCA.

The webinars, which will discuss using CDX for upfront payment of fees, will be held on 10 and 24 October and 7 November.

Each webinar will be limited to the first 1,000 registrants. The agency says a recording will be posted on its website after the first webinar.

### TSCA 'not likely to present an unreasonable risk' findings

The agency has issued two "not likely to present an unreasonable risk" findings under TSCA section 5(a)(C) for new chemical substances that were the subject of a pre-manufacture notice (PMN).

The determinations will allow the substances to go to market without restriction. The agency cites a risk assessment in support of these decisions.

The first substance – waxes and waxy substances, rice bran, oxidized, calcium salts – is used as a lubricant and surface protection agent for consumer, commercial and industrial applications. Consumer products may include shoe polish, floor coatings, and car polishes.

The second is an alkanolic acid, substituted alkyl-, polymer with isocyanatoalkane, alkyl carbonate, alkanediol and polyalkylene glycol ether with alkyl(substituted alkyl) alkanediol alkenoate, glycerol monoacrylate alkenoate-blocked. It is intended for industrial use as a waterborne UV curable coating resin binder in inks or overprint varnishes.

The EPA's determinations say that although these substance could be very persistent, they have low potential for bioaccumulation, "such that repeated exposures are not expected to be cumulative".

Based on test data, the agency says the substances are not likely to present an unreasonable risk under their conditions of use.

## EE News: Committee split over 'secret science' proposals

<https://www.eenews.net/eedaily/stories/1060100481>

Sean Reilly, E&E News reporter- Published: Thursday, October 4, 2018

The Senate Environment and Public Works Committee held a hearing yesterday on EPA science policy. Environment and Public Works Committee

A first-ever Senate hearing on a proposed revamp of EPA's handling of science revealed some familiar fractures yesterday.

As one Democratic lawmaker questioned the credibility of a witness who has taken research money from Exxon Mobil Corp., others split sharply along party lines on the agency's plan to restrict its use of studies in crafting new regulations.

The proposed rule, titled "Strengthening Transparency in Regulatory Science," would allow the agency to tap only studies for which the underlying research data "are publicly available in a manner sufficient for independent validation."

Although transparency is laudable, the proposal "is far more likely to hinder science-based regulation than help it," said Sen. Cory Booker (D-N.J.), the ranking member on the Senate Environment and Public Works Subcommittee on Superfund, Waste Management and Regulatory Oversight.

Sen. Mike Rounds (R-S.D.), the subcommittee's chairman, offered an opposing point of view.

Although EPA regulations help protect the public from tainted water and other dangers, Rounds said, "I have been concerned that the broad discretion and lack of transparency at the EPA had led the agency to seek out the science that supports a predetermined policy outcome."

Rounds is the sponsor of S. 1794, which would similarly prohibit the agency from using research for which the underlying data are not "transparent or reproducible."

The three witnesses were similarly divided.

Robert Hahn, an economist and senior policy scholar at Georgetown University, lauded the EPA proposal and said Rounds' bill addresses "an important public policy concern."

"Greater transparency and accountability for decision-making are critical not just for the EPA, but for virtually all government agencies that use models and data to design programs and regulations," Hahn said in his prepared testimony.

Edward Calabrese. Photo credit: Senate and Public Works Committee  
Edward Calabrese. Environment and Public Works Committee

Also in favor was Edward Calabrese, a professor of toxicology at the University of Massachusetts, Amherst, who called the EPA proposal "an excellent start." Most of the agency's scientific decisions, Calabrese said, "are based on multiple assumptions, some of which are frequently hidden, obscured and often silent drivers of regulatory action."

But Rush Holt, the CEO of the American Association for the Advancement of Science and a former congressman, said many scientists and scientific organizations are opposed. While backers say they want to end "secret science," Holt said, "the open secret" is that "they appear to be seeking a way to cherry-pick research in order to loosen regulations."

The proposed rule, released in April, attracted a torrent of feedback during the public comment period. EPA has not yet signed off on a final version. Rounds' bill, introduced last fall, is still awaiting action by the full Environment and Public Works Committee.

Sen. Sheldon Whitehouse (D-R.I.) introduced Calabrese's resume into the written hearing record, saying that it would help to judge "his conflicts of interests."

That resume, dating back to 2013 and posted on the university's website, shows that Calabrese received \$150,000 annually in Exxon Mobil Corp. research funding from 2007 to 2013 and had previously done work for companies like Waste Management Inc. and Dow Chemical Co., along with EPA and other government agencies.

Speaking to reporters afterward, Calabrese said he's primarily an academic researcher, not "a heavy-duty industry consultant," and expressed puzzlement over why Whitehouse singled him out.

"He's attacking the wrong person," Calabrese said.

Rounds' bill is a companion measure to H.R. 1430, sponsored by House Science, Space and Technology Chairman Lamar Smith (R-Texas). Smith's bill passed the House last year on a mostly party-line vote but has also not advanced in the Senate.

Smith's committee has repeatedly targeted EPA's use of science. Yesterday's Senate hearing, which lasted little more than an hour, was the first time the EPW panel has taken up the topic.

No one from EPA was invited to testify. The intent "was to bring in outside experts," Rounds spokeswoman Katie Douglas said in an email.



## **CNN: Ex-EPA chief: Trump will pollute your air and make you pay for it**

<https://www.cnn.com/2018/10/04/opinions/protect-clean-car-standards-christine-todd-whitman/index.html>

By Christine Todd Whitman- Updated 8:25 AM ET, Thu October 4, 2018

With the Trump administration taking steps to roll back America's clean-cars standards, states are preparing for what is sure to be an epic legal battle over states' authority to protect their citizens from dangerous pollution. In the latest escalation in their fight against the Trump administration, California regulators have approved new measures to defend the state's vehicle emissions standards.

We should all be rooting for these regulators. Since the election of Donald Trump, the Environmental Protection Agency (EPA) has been guided by appointed officials who have fundamentally failed to uphold its mission: to protect public health and the environment. From undermining and ignoring established science, to rolling back lifesaving public health protections, it's become abundantly clear that this administration has no intention of upholding the core mission of the EPA.

This summer, when former EPA Administrator Scott Pruitt announced his resignation, I was hopeful that the agency would have a chance to refocus. Unfortunately, it is now clear that his replacement -- acting EPA Administrator Andrew Wheeler -- plans to follow through with Pruitt's toxic agenda.

For example, Trump, Wheeler and National Highway Traffic Safety Administration (NHTSA) Deputy Administrator Heidi King recently announced their plans to reverse America's clean-car standards.

With the transportation sector, now the country's largest source of carbon pollution, the clean-car standards are the most effective policy we have on the books to fight climate change. Rolling back these standards will mean dirtier cars that pollute the air and jeopardize the health of millions of Americans, especially the over 26 million Americans who suffer from asthma.

This move by the Trump administration will not only pollute our air and put lives at risk, but will also force consumers to spend hundreds of billions of dollars more on gas. The current standards save consumers as much as \$5,700 per car and \$8,200 per truck over the lifetime of their vehicles, thanks to increased fuel efficiency.

And that's particularly important when you consider that gas prices reached their highest point in nearly four years over this summer. American families cannot afford to spend any more of their money at the pump at a time when prices are rising.

What's worse, even the EPA's own Scientific Advisory Board is questioning the "adequacy" of scientific justifications used to roll back the clean car standards, particularly what this move could mean for climate change, air pollution, as well as impacts on Americans' health and safety. This rollback also ignores thousands of pages of research showing that the current standards are achievable, protect public health and reduce air pollution. The EPA should make decisions based on science -- not willfully ignoring the work of scientists.

As if this attack on our health and our wallets isn't bad enough, the Trump administration's proposal also rolls back states' authority to protect their citizens from harmful air pollution. More specifically, this proposal attacks states' rights to adopt stronger standards on tailpipe pollution. For decades, states have had the longstanding authority under the Clean Air Act to adopt stronger tailpipe pollution standards than those set by the federal government.

This cooperative approach has been in place for decades, and was supported by President Ronald Reagan.

All of this is why it is so important that Americans across the country have had the opportunity to make their voices heard at public hearings organized by EPA and NHTSA in Fresno, California; Dearborn, Michigan; and Pittsburgh. It's essential that the Trump administration understands how this rollback will impact the lives of our families, and these hearings gave families a chance to make their voices heard. At the end of the day, Americans deserve clean air, and that message needs to be made loud and clear.

While the public hearings may be over, the public can still submit comments into the federal register until October 23, and I'd encourage all to do so. My hope is that with this public input fresh in their minds, Trump and EPA officials will reverse their attempt to roll back these lifesaving standards.

After all, who really benefits from weakening our clean-car standards? The answer is certainly not our environment or American families.

## **PR News Wire: Energy Inspectors Corporation® Wins E.P.A. 2018 WaterSense® Partner of the Year Award**

<https://www.prnewswire.com/news-releases/energy-inspectors-corporation-wins-epa-2018-watersense-partner-of-the-year-award-300724203.html>

Ei Companies - 08:33 ET

Company sweeps 2018 EPA Awards for Energy, Water, and Indoor Air Quality.

LAS VEGAS, Oct. 4, 2018 /PRNewswire/ -- The Environmental Protection Agency (EPA) recognized Energy Inspectors Corporation with a 2018 WaterSense Partner of the Year award. Energy Inspectors will be honored at the WaterSmart Innovations Conference on October 4, 2018 for its role in water efficiency innovation and WaterSense promotion.

More than 1,900 utility, manufacturer, retailer, builder, and other WaterSense organizational partners, in 2017 alone, saved an estimated 631 billion gallons of water using WaterSense products. To understand the magnitude of savings, it is said to be possible that 100% of the world's population can fit into a cubic mile. WaterSense has helped consumers and businesses save more than 2.7 trillion gallons of water since 2006—That's over 2 cubic miles of water, or as much water as flows over Niagara Falls in over 2 months!

This is the fifth WaterSense Award given to Energy Inspectors Corporation and the 4th time the company has won 3 EPA awards in one year. The company was also awarded the EPA Energy Star Partner of the Year, and the EPA Indoor AIRPLUS Leadership awards in 2018.

"We are proud to be part of the solution to help sustain and preserve such a precious natural resource," said John Gillett, President of Energy Inspectors Corporation. "We would like to thank the EPA again for recognizing Energy Inspectors the third time this year as an EPA award winner," added Galo LeBron, CEO of Energy Inspectors Corporation.

### **About WaterSense**

WaterSense, is a partnership program sponsored by the EPA, which seeks to protect the future of our nation's water supply by offering ways to use less water with water-efficient products and services in homes saving trillions of gallons of water. For more information about WaterSense, visit [www.epa.gov/watersense](http://www.epa.gov/watersense)

### **About Ei Companies**

Energy Inspectors Corporation, is a part of Ei Companies, a group of companies servicing the Residential and Commercial construction industries, and offering Inspection, Engineering, Design, Quality Assurance and Risk Management solutions to residential and commercial builders. Energy Inspectors Corporation is one of the leading sustainability companies in the United States, certifying tens of thousands of residential, and commercial properties for energy efficiency, water conservation and indoor air quality annually. Ei Companies are headquartered in Nevada, with offices throughout the United States.

## EE News: Documents: How Pruitt launched his legal defense fund

<https://www.eenews.net/stories/1060100539>

Kevin Bogardus, E&E News reporter Greenwire: Thursday, October 4, 2018

Scott Pruitt's attorney was working last year to set up a fund to pay the then-EPA administrator's legal expenses, months before ethics allegations exploded into a national scandal.

Cleta Mitchell, a partner at Foley & Lardner LLP and the trustee of Pruitt's legal defense fund, sent an email last November to the Office of Government Ethics, saying she had been retained to set up the legal defense fund, according to documents obtained by the Campaign Legal Center and shared with E&E News.

The records reveal that Pruitt's attorney was working behind the scenes to set up a legal defense fund long before its existence was made public. Pruitt confirmed that the fund was in operation in May during questioning from Senate Democrats (Greenwire, May 16). The documents also indicate that Pruitt was subject to a bar complaint in Oklahoma for having sued EPA before leading it, a complaint that has not been previously reported.

Last November, Pruitt's troubles were nascent, with an inspector general review of his travel launching just a few months earlier.

But that was well before Pruitt's ethics allegations spun out of control, set off with news in March that he had rented a Capitol Hill condo tied to a lobbyist with business before EPA. By July, as more and more investigations piled up, Pruitt resigned from the agency.

The newly released records detail Mitchell's dealings with the ethics office over the past year. Sources familiar with Pruitt's legal defense fund confirmed to E&E News that the redacted OGE records show interactions between Mitchell and OGE officials discussing the ex-EPA chief and his legal defense fund.

"I have several questions which I would like to discuss with you, so if you could please let me know a convenient time to talk, I will call you at that time," Mitchell said in the Nov. 28, 2017, email. She said she had been in touch with Stefan Passantino, then the White House deputy counsel in charge of compliance and ethics oversight, who had sent her the template document regarding such trusts. Mitchell and Seth Jaffe, chief of OGE's ethics law and policy branch, agreed to do a call that afternoon.

Other OGE records show the ethics office recommended to "avoid appearance of corruption concerns" that donors to the fund be "voluntarily disclosed," although that "it is not strictly required by ethics rules." Pruitt told lawmakers in May that he planned to disclose his donors.

In early April, Mitchell left a voicemail at OGE asking about who could donate to a legal defense fund. OGE officials left two voicemails in reply that month before connecting again with Pruitt's lawyer on April 27.

That day, Mitchell indicated that Pruitt's defense fund was in existence and did not become "active" until the 2018 calendar year, according to OGE notes of the call.

Mitchell had several questions as well, including whether a "passive investor" in a company with business before EPA would be "a prohibited source" for Pruitt's defense fund. In addition, she worried that "there is a 'fear' that 'everything is someday, somehow going to be subject to the EPA.'"

Mitchell asked, "With no specific transactions, business, matter, proceeding, in the past or in the present, is that a 'prohibited source'?"

OGE officials advised Mitchell on who can and cannot donate to the fund and gave her contact information for the EPA ethics official to help determine which donors would be banned from contributing to Pruitt's fund due to them having interests before the agency. The ethics office also said that Mitchell had raised the possibility of creating a 527 organization, a tax-exempt political group that can raise unlimited funds and is required to disclose its contributions and expenditures.

"We told her that, regardless of the way the fund is formed, the fund would need to be consistent with OGE's template. We also noted that the fund would otherwise need to qualify for and comply with the requirements of a 527 organization," said ethics officials.

IRS records show that Mitchell had already formed a 527 group that month to serve as a legal defense fund for Pruitt.

Named the "Scott Pruitt Legal Expenses Trust," its establishment date is April 24, but it was posted online on July 5, the day Pruitt announced his resignation, according to the IRS website. Mitchell is listed as its trustee, the group's sole officer.

Mitchell would have another call with OGE — this time in July, days after Pruitt left EPA.

OGE notes of the July 11 call show there was discussion of how "certain outstanding legal bills were likely reportable" as well as whether gift rules still apply to former federal employees. Mitchell also brought up establishing "a new fund" as a 527 group, incorrectly written as "a 529 organization" in the notes.

OGE confirmed that the "529 organization" described in the agency's records should have read as a "527 organization" but declined to comment further when contacted by E&E News.

In addition, Mitchell asked if Pruitt would have to disclose contributions to his legal defense fund. She was advised that those donations must be reported.

"We noted that the gift is reportable at the time of donation, not distribution; and that the source is the donor, not the fund," said the OGE notes. "In other words, any donations to the fund totaling more than \$390 that were donated while he was an employee must be reported."

Considering Pruitt's legal defense fund was not active until 2018, its donors, if they gave before he left EPA, would be disclosed as gifts on Pruitt's termination report, or his last public financial disclosure report. That report is now expected to be filed this November.

The Campaign Legal Center obtained the OGE records under the Freedom of Information Act. Delaney Marsco, ethics counsel for the group, said contributions to Pruitt's defense fund should be reported.

"If this individual is a public filer, like Pruitt would be, he would have to report the gifts to the legal defense fund on his annual disclosure report," Marsco said.

She, however, expressed concern that Pruitt would manage somehow to avoid disclosure. Marsco cited a note by Kevin Minoli, then EPA's top career lawyer and senior ethics official, on Pruitt's 2017 financial disclosure report that he could only take disclosures at "face value" from a filer like Pruitt.

"We have seen Pruitt have an indifferent attitude to government ethics," Marsco said. "That makes me hyper-vigilant to see what he reports."

In addition, a 527 group like Pruitt's legal expenses trust created by Mitchell would have to disclose its contributors under IRS rules.

Other 527 organizations have been formed to serve as legal defense funds and have shared their donors. The Wall Street Journal reported that the Patriot Legal Expense Fund Trust, set up to help President Trump's associates with legal fees from special counsel Robert Mueller's Russia investigation, had raised over \$200,000, including from donors like natural gas giant Continental Resources Inc., led by Harold Hamm, its CEO and a Trump adviser.

Pruitt has racked up his legal expenses. His 2017 financial disclosure report showed he owed \$115,000 to \$300,000 in fees to two law firms (E&E News PM, Sept. 12).

'Merged' complaints against Pruitt

In her November email to OGE, Mitchell explained that she had been retained to set up the defense fund to help pay legal expenses from a bar complaint alleging her client violated the professional code because he had "previously filed suit against the agency" he had joined.

Pruitt did have a bar complaint filed against him when he was EPA chief, but what Mitchell described in her email appears to be different than that grievance.

That complaint, filed by the Center for Biological Diversity and University of Oklahoma law professor Kristen van de Biezenbos in March last year, alleged that Pruitt violated professional conduct rules by saying at the hearing that he only used his work email for official business as Oklahoma attorney general. Pruitt would later clarify his testimony that he had used personal email for work.

Mitchell did not offer any more details on the bar complaint she described in her email to OGE, other than to say it has since been dismissed.

"I will respond only to your question regarding the bar complaint(s). The bar complaint(s) were investigated together and are essentially the same. Not different. And they were both dismissed a couple of months ago and the matter(s) are now closed," Mitchell said in an email to E&E News.

"As I said, the bar complaint(s) were essentially the same, indistinguishable, were merged and all have been reviewed and dismissed. There are no further matters pending before the [Oklahoma] Bar Association involving Mr. Pruitt."

The Center for Biological Diversity's bar complaint attracted attention from Pruitt's critics.

In July 2017, Sen. Sheldon Whitehouse (D-R.I.), who sits on the Environment and Public Works Committee, sent a letter to the Oklahoma Bar Association with additional information to supplement the group's complaint. CBD would also add more information to its complaint, sending amendments to its grievance.

Despite their efforts, Pruitt would not be sanctioned by his home state bar. The Oklahoma Bar Association said in a letter this July that it had dismissed the complaint.

Gina Hendryx, general counsel for the Oklahoma Bar, said, "The factual circumstances of your grievance did not warrant further investigation or disciplinary action."

[Click here to read the OGE records](#) and [here to read the IRS filing](#) for Pruitt's legal defense fund.

## Daily Signal: The EPA Is Reportedly Going to Stop One of Its Costliest Abuses

<https://www.dailysignal.com/2018/10/04/will-epa-stop-its-abuse-of-costly-pollution-control-co-benefits-assessments/>

Daren Bakst- October 04, 2018

If the Environmental Protection Agency decides to regulate emissions of a specific pollutant, should those emission reductions yield benefits that exceed the costs of doing so?

The commonsense answer to that question is: Of course.

But that's not how things work with many EPA air pollution regulations. Instead, the EPA has found a way to game the regulatory process in order to impose some of the costliest regulations in U.S. history by using the "co-benefits" (i.e., indirect benefits) of emission reductions of another pollutant, fine particulate matter.

Through the use of these co-benefits, the EPA justifies rules even though there may be little, if any, benefits connected to the purpose of the rule.

Now, the Trump administration and the EPA reportedly are about to do something to curb this abuse.

The EPA is going to recalculate the costs and benefits of a controversial rule known as the Mercury and Air Toxics Standards Rule for Power Plants, the so-called "MATS rule." As reported, this co-benefits abuse will not be employed in a new cost-benefit analysis.

When the EPA finalized the MATS rule in 2012, it didn't bother to consider costs when deciding whether to regulate mercury emissions. This led to a Supreme Court case, *Michigan v. EPA*, challenging the agency's failure to consider whether the rule was "appropriate and necessary," as required under the Clean Air Act.

In 2015, the court held that the EPA, because of that "appropriate and necessary" language, must consider costs.

Justice Antonin Scalia, writing for the majority, explained, "[a]gainst the backdrop of this established administrative practice [consideration of cost], it is unreasonable to read an instruction to an administrative agency to determine whether 'regulation is appropriate and necessary' as an invitation to ignore costs."

The EPA did estimate that the annual benefits of reducing mercury emissions was a mere \$4 million to \$6 million. The estimated costs, however, were \$9.6 billion.

As Scalia pointed out, "[t]he costs to power plants were thus between 1,600 and 2,400 times as great as the quantifiable benefits from reduced emissions of hazardous air pollutants."

As the court succinctly explained, "[n]o regulation is 'appropriate' if it does significantly more harm than good."

The EPA has argued that the MATS rule, though, has co-benefits from reducing fine particulate matter and sulfur dioxide that amount to as much as \$37 billion to \$90 billion per year.

This abuse of co-benefits allows the EPA to regulate fine particulate matter without ever making the case that regulating the pollutant of concern (such as mercury) is truly warranted.

These co-benefits can become a cover for regulating whatever the EPA wants without ever justifying the regulation of the targeted pollutant, or for that matter, explaining why there are not far better (and direct) ways to address fine particulate matter.

There is also a specific Clean Air Act process for regulating fine particulate matter and other criteria pollutants (six major air pollutants). Using these non-particulate matter rules as justification to regulate fine particulate matter is an end run around this process. In fact, that was a point brought up by Chief Justice John Roberts in the *Michigan v. EPA* oral arguments.

This gaming of the system is misleading to the public. For example, it gives the misimpression that reductions in mercury will yield significant benefits, when in fact, the alleged benefits are almost entirely derived from reductions in fine particulate matter.

Such gaming is also not transparent to the public, and it's susceptible to double counting of alleged co-benefits.

The MATS rule is not an aberration when it comes to co-benefits abuse. According to NERA Consulting data, based on 26 EPA regulatory impact analyses of major rules between 1997 and 2011, 21 of the rules derived most of their benefits from fine particulate matter co-benefits.

In six of those EPA analyses (from 2009 to 2011), the co-benefits accounted for all of the benefits.

Fortunately, it sounds like the EPA and the Trump administration are going to address this abuse.

As reported by The Washington Post:

[A]cting Administrator Andrew Wheeler said the EPA is focused on producing analyses that capture the specific impact of a rule—in this case, mercury—rather than the accompanying benefits that stem from installing new pollution controls on equipment.

"I just think it's a little fuzzy math when you say, 'Reduce mercury, and we have all these other benefits over here,' as the shiny object," Wheeler said, adding that the agency could still consider other benefits, but should categorize them separately.

While concerns over EPA overreach often focus on the agency exceeding its statutory authority, these hidden games that impose billions of dollars in regulatory costs shouldn't be forgotten.

The EPA should stop this gaming of the regulatory process for all air pollution rules. Congress should pass legislation to that effect.

To its credit, it appears the EPA may be on its way to doing so, and as a result, helping to improve the integrity and transparency of the regulatory process.



## Wyoming Public Media: EPA To Help Schools Test Drinking Water For Lead

<http://www.wyomingpublicmedia.org/post/epa-help-schools-test-drinking-water-lead#stream/0>

By STEPHANIE DANIEL

The Environmental Protection Agency is making \$20 million available for states and tribes to voluntarily test drinking water for lead at schools and childcare facilities.

Skye Borden, state director of Environment Montana , said it's important for educational institutions to test for the chemical, which is especially harmful to children. They also need to report the results.

"I think it's important for parents, teachers and students to be able to easily access information about the water quality in their school," she said.

Borden's group contributed to a recent report on school drinking water across the country including in Montana, Colorado and Utah. It concluded that the problem is more pervasive than previously thought.

"One thing that we do see, that can be an issue in western towns, particularly ones with a legacy of mining. The more acidic your water is, the more likely you are to have leeching from lead pipes," said Borden.

To participate in the grant program, states must submit a letter of intent to the EPA by January 11, 2019.